



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

March 5, 1998

Mr. Carl J. Shahady
Agency Attorney
Texas Municipal Power Agency
P.O. Box 7000
Bryan, Texas 77805

OR98-0610

Dear Mr. Shahady:

You ask whether certain information is subject to required public disclosure under the Texas Open Records Act, chapter 552 of the Government Code. Your request was assigned ID# 113192.

The Texas Municipal Power Agency (the "agency") received a request for a copy of all contracts which the agency has with Lafarge Corporation for the sale and marketing of fly ash and/or any other coal combustion by-products produced at the agency's Gibbons Steam Electrical Station. You have submitted a copy of an April 25, 1996 agreement for our review. You assert that the document at issue may contain trade secrets and therefore is excepted from public disclosure by section 552.110 of the Government Code.

Since the property and privacy rights of a third party may be implicated by the release of the requested information, this office notified Lafarge Corporation ("Lafarge") about the request. See Gov't Code § 552.305 (permitting interested third party to submit to attorney general reasons why requested information should not be released); Open Records Decision No. 542 (1990) (determining that statutory predecessor to Gov't Code § 552.305 permits governmental body to rely on interested third party to raise and explain applicability of exception in Open Records Act in certain circumstances).

Lafarge responded to our notification and asserts that certain financial details of its agreement with the agency are trade secrets. Section 552.110 protects the property interests of private parties by excepting from disclosure two types of information: (1) trade secrets,

and (2) commercial or financial information obtained from a person and privileged or confidential by statute or judicial decision.

The Texas Supreme Court has adopted the definition of "trade secret" from the Restatement of Torts, section 757, which holds a "trade secret" to be

any formula, pattern, device or compilation of information which is used in one's business, and which gives him an opportunity to obtain an advantage over competitors who do not know or use it. It may be a formula for a chemical compound, a process of manufacturing, treating or preserving materials, a pattern for a machine or other device, or a list of customers. It differs from other secret information in a business . . . in that it is not simply information as to a single or ephemeral event in the conduct of the business A trade secret is a process or device for continuous use in the operation of the business. . . . [It may] relate to the sale of goods or to other operations in the business, such as a code for determining discounts, rebates or other concessions in a price list or catalogue, or a list of specialized customers, or a method of bookkeeping or other office management.

RESTATEMENT OF TORTS § 757 cmt. b (1939); *see Hyde Corp. v. Huffines*, 314 S.W.2d 763, 776 (Tex.), *cert. denied*, 358 U.S. 898 (1958).¹

After reviewing the arguments presented by Lafarge, we do not believe that the marked financial information is within the Restatement definition of a trade secret. The information seems to relate exclusively to this contract, which is a "single or ephemeral [event] in the conduct of the business" rather than "a process or device for continuous use in the operation of the business." Accordingly, the agency may not withhold the marked information from public disclosure as a trade secret. *See Open Records Decision Nos. 319 (1982) at 3, 306 (1982) at 3.* The agreement must be released in its entirety.

We are resolving this matter with an informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and should not be relied on as a previous

¹The six factors that the Restatement gives as indicia of whether information constitutes a trade secret are: "(1) the extent to which the information is known outside of [the company]; (2) the extent to which it is known by employees and others involved in [the company's] business; (3) the extent of measures taken by [the company] to guard the secrecy of the information; (4) the value of the information to [the company] and [its] competitors; (5) the amount of effort or money expended by [the company] in developing the information; (6) the ease or difficulty with which the information could be properly acquired or duplicated by others." RESTATEMENT OF TORTS § 757 cmt. b (1939); *see also Open Records Decision Nos. 319 (1982) at 2, 306 (1982) at 2, 255 (1980) at 2.*

determination regarding any other records. If you have any questions regarding this ruling, please contact our office.

Yours very truly,

A handwritten signature in cursive script, appearing to read "June B. Harden".

June B. Harden
Assistant Attorney General
Open Records Division

JBH/glg

Ref.: ID# 113192

Enclosures: Submitted documents

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